

# **MEETING MINUTES**

## **NATIONAL COMMITTEE ON LEVEE SAFETY (NCLS): National Levee Safety Act, Title IX of the Water Resources Development Act of 2007 (WRDA)**

### **MEETING #5**

**3 December 2008 – 5 December 2008**

**Crown Plaza  
Denver, CO**

### **EXECUTIVE SUMMARY**

These minutes cover the proceedings from the fifth meeting of the National Committee on Levee Safety (NCLS, referred to as “Committee”), which took place from 3 December 2008 – 5 December 2008. The meeting was comprised of the Committee’s voting and non-voting members, other support and technical staff from the USACE and facilitators from SRA International, Inc. The objectives of this meeting were to:

- Complete a draft final set of recommendations
- Tee up any non-consensus issues for discussion at the December 9-11 meeting
- Determine what the final product will be for the Review Team meeting.

### **Voting Members in attendance:**

- Mr. Eric Halpin, Committee Vice Chair, USACE
- Mr. Bill Blanton, FEMA
- Mr. Don Basham, Private Sector
- Mr. Les Harder, Private Sector
- Ms. Karin Jacoby, Kansas City, MO
- Mr. Dusty Williams, Riverside County Flood Control District, CA
- Mr. Rod Mayer, State of California
- Mr. Mike Stankiewicz, State of New York
- Mr. Robert Turner, State of Louisiana
- Mr. Paul Perri, State of Colorado

### **Non-voting members in attendance:**

- Ms. Sam Riley Medlock, ASFPM
- Ms. Susan Gilson, NAFSMA
- Mr. Steve Verigin, Private Sector, ASDSO

### **Support staff in attendance:**

- Carol Sanders, USACE
- Terry Zien, USACE
- Craig Kennedy, FEMA

## **Action Items**

- By 5 am ET, Sat Dec 6<sup>th</sup>, Committee Members:
  - Send your updated recommendations to Linda Manning and Laura Sneeringer
  - Fill in your costs in the Cost Spreadsheet on the Backpack Plenary Materials page (<https://nlsc.backpackit.com/pages/1613304>) or send to Linda Manning and Laura Sneeringer
- On Dec 8<sup>th</sup> (late), Linda Manning will send:
  - Draft Strategic Plan Recommendations Section
  - Dec 9-11 Committee Meeting agenda
  - Dec 12<sup>th</sup> Review Team agenda
- Committee members send Carol Sanders your media contacts.
- By Dec 10<sup>th</sup>, review the draft Strategic Plan background piece and send Eric Halpin any comments.
- Carol Sanders will send directions for the public Web Ex to your Committee members' networks.

## **WEDNESDAY, 3 DECEMBER 2008**

### **Note about Conversation with Gerry Galloway – Don Bashem**

Don Bashem highlighted a conversation he had with Gerry Galloway. Gerry said that while his report is one of the most quoted and referenced documents that many people refer to, it has not accomplished a lot with respect to its original purpose. If he could do it all over again, he would change the following: 1) he would not have so many recommendations as there were too many for people to understand them all and there were more reasons for people to oppose the report. 2) He noted that the Gingrich revolution turned around all the committees and he lost all of his support. The Committee is facing the same challenge today.

### **Agenda Review, Approval of Minutes from Meeting Four – Linda Manning, Facilitator**

The main objectives of this meeting are:

- To agree on a set of recommendations on a high, important level. Determine conceptually if the recommendations are comprehensive, if there any gaps that need to be fixed, and if these are the recommendations that the Committee wants to move forward with.
- Highlight any recommendations on which there is not agreement. Previously, the Committee decided that any non-agreement recommendations would be shared with Steve Stockton and he will likely come back to the group to discuss.
- Determine what the product should be for the Review Team meeting.

The packet includes:

- Recommendations to date
- Draft Strategic Plan background text – there is no time on the agenda to discuss this because time needs to be spent on the recommendations
- Minutes from Meeting 4 minutes for review
- Crosswalk of Recommendations by Goals

## **Review of Overall Set of Recommendations – Linda Manning**

This list of recommendations includes those listed below. New recommendations are bold and italicized. Significantly updated recommendations are just italicized. The group will discuss the content of the new recommendations but not discuss specific organization and details. The Committee will then talk about as many significantly updated recommendations as possible.

1. Definitions
2. Safety Standards
3. Expansion of a National Levee Database
4. R&D Program
5. Tolerable Risk Guidelines
6. ***Liability Protection***
7. ***Certified Levee Professionals***
8. Guidance for Levee Safety Programs
9. National Levee Safety Program
10. Technical Assistance Materials
11. National Levee Safety Program Web Site
12. ***Establish National Levee Safety Board – Governance***
13. *Federal Agencies Support NLSP*
14. ***Assist NFIP Communities in Increasing Funding***
15. ***Create a Rehabilitation Improvement Program***
16. ***National Flood Risk Management Program***
17. Delegation of Activities to States
18. ***Federal Activities for Non-Delegated States***
19. *Incentives and Disincentives*
20. Local Owner/Operator O&M
21. *Delegated Programs Strong Public Education*
22. ***Mandatory Flood Insurance***
23. ***FEMA's CRS Program Revised for Credits***
24. ***New FEMA Grant Program***
25. ***Revise FEMA Grants***
26. ***Environmental Permitting***
27. *USACE to Establish Inventory and Inspect all Levees*
28. ***FEMA Develop Robust Accreditation***
29. Public Education/Awareness Program
30. *FEMA Mapping Program Augmented*
31. DELETED: Provide Funding for Correcting Levee Deficiencies
32. ***Develop Standards of Care***

**Comment:** The thought behind 7 could be combined with other recommendations. For example, the training piece could be incorporated into the training recommendation and the minimum state requirements could be added to #17.

**Comment:** The following recommendation could be combined: 6/32; 3/27.

**Comment:** Recommendation #31 was deleted from the list because it is embedded in other recommendations.

**Comment:** The Committee will talk about the general timeline and getting up and running during the governance conversation on #12.

**Comment:** There is a suite of things that are incentives/disincentives. It is suggested to combine all of these into #19, which is the meta-level recommendation.

## **Review of Governance Recommendation**

*Recommendation 12: Establish a National Levee Safety Commission. The major elements of a National Levee Safety Program should include 1) a National Levee Safety Commission with its own staff and also receiving supplemental staff support from federal agencies, 2) a) Minimum State levee safety programs required to be adopted/implemented within a defined time frame or loss of existing federal funds, and b) Some activities undertaken at the Federal level when States do not establish a minimum program, and 3) Grants/assistance incentives for States, regional/local entities and owner/operators.*

### *Overview of Recommendation Update*

The group reacted to a figure of the draft governance structure, which is meant to show how components relate to one another. The timeline information is described in the written recommendation and in a second graphic. Some key background points include:

- This approach is meant to represent the final condition.
- The terminology was changed from “Commission” to “Board” only because the acronyms were getting confusing. After reviewing common definitions for these terms, there did not seem to be significant differences.
- The approach includes a designated Chair and Vice Chair in order to ensure political independence. This approach is modeled after the Mississippi River Commission.
- The Board included two spots reserved for members for USACE and FEMA because they will be significantly involved, but other federal agency representatives will be determined, depending on what topics the Board is considering.
- Decisions on staffing changes draw from models such as the Delaware River Commission and National Transportation Safety Board. Funding needs were considered in the number of staff recommended. Staff would include roles such as: Grants Coordinator, Administrative Support, Interagency Coordinator, etc.

### *Board Representation*

**Comment:** If the Board members are going to be appointed by the President and confirmed by the Senate, there needs to be language that allows designees since it could take up to 18 months to obtain approval by the Senate.

**Comment:** If Board membership is qualification-based (e.g., engineering and science) it will be difficult because a levee program needs engineers, who are generally not well connected with Congress.

**Comment:** There needs to be a variety of qualifications considered, such as engineers, public affairs, etc.

**Comment:** The Committee may want to suggest which federal agencies should be on the Board because representation affects other recommendations. There are two types of federal agencies: 1) those that deal with levees (e.g., NRCS, USBR) and 2) those whose resources the program will specifically and explicitly tap in to for incentives and disincentives (e.g., EPA, HUD, DOT). It will be difficult to obtain support from different players if they do not have a seat on the Board.

**Comment:** DOT should not be suggested, due to the current stimulus package.

**Comment:** Since the Committee has not talked specifically about which federal agencies should be at the table, taking into account associated pros and cons, it may be better to keep the list of federal representatives somewhat general.

**Comment:** Instead of listing specific agencies, we could use general terminology on types of agencies. For example, instead of specifically listing HUD, we could use “community development” agency.

**Question:** Is it possible to have a federal agency that is chaired by a person that is not a federal employee?

**Response:** Since the Board is paid, they become special employees to the federal government, thus making them federal employees.

**Comment:** A potential model is the old organizational structure of the Mississippi River Commission before they transitioned into their current structure. They used to have their own staff.

#### *Roles and Responsibilities*

**Question:** Who would lead the Advisory Committees?

**Response:** It was suggested that each Advisory Committee be chaired by a board staff person, or at least that a staff person be represented on each Advisory Committee. It might be better if federal agency representatives do not chair Advisory Committees.

**Comment:** It may be necessary to have an Executive Director to provide continuity and serve as a point person.

**Response:** The “Administrative Officer” was meant to serve as the Executive Director. This terminology will be changed.

**Question:** How will these people be paid?

**Response:** The Board will be paid. The Advisory Committee members will be volunteers with paid travel. Its role is to be a voting body, with significant support from the Board Staff and from federal support contracts.

**Comment:** It was suggested that Advisory Committees members could be paid, at least in the initial months/years during implementation so progress gets made quickly. One idea is to have people on temporary assignment on the Advisory Committee.

**Question:** What is the role of the Board? Is it an Advisory Board (e.g., meets 4 times a year and have staff run the program) or high-level Executive Staff?

**Responses:** It is like a Board of Directors that the Board Staff have to report to. The Board will decide on criteria for a delegated program and which states are approved and the staff will do program management.

**Comment:** Additional items to consider include:

- There may be value in staggered service, with appointees having defined term lengths.
- Salary issue – quantify if part time work by appointments is a problem
- Appointees could decide who the chair and vice chair are. The group seemed to support this idea.

### *Independent vs. Imbedded*

**Comment:** Setting up a separate agency may be infeasible at this point, with a new Administration and significant government resources being spent on stimulus packages.

**Comment:** This governance structure could be imbedded into a current agency without too many changes, although the Committee would need to do a close review to ensure all recommendations can be accomplished within an agency.

**Comment:** It seems that the recommendations would require an independent Board, but this could be revisited.

**Comment:** The Committee could recommend an independent agency with a rationale that describes the functional elements, guiding principles, pros and cons that should be considered, etc. This way, if Congress decides to imbed the program in a current agency, they will at least understand the key components.

**Comment:** The program may not work in USACE because 50-75% of funding is going to be passed through to the states in the beginning and USACE does not want to do pass through funding. The Committee could specifically highlight as a con that USACE does not want to be a granting agency. It could be highlighted as an uncertainty of WRDA.

**Comment:** When you are not at the cabinet level, your issues do not receive as high a priority.

### *Environmental Coordination Role*

**Comment:** There should be an environmental coordination task under one of the Advisory Committees. This is a significant issue for operation and maintenance. The purpose is to have a facilitation liaison role in coordinating resource issues, which are part of O&M. Environmental groups can help.

**Comment:** This may come across as focusing on a special interest group when instead it should be embedded throughout the recommendations.

Note: The group did not feel this topic fits under Engineering, Research and Redevelopment.

**Comment:** The Board can add ad hoc Advisory Committees whenever it wants to.

**Comment:** There needs to be a better name for the Engineering Research and Development Group.

**Question:** Is there a group that looks at flood risks as a whole?

**Comment:** Environmental, land use planning (though different terminology should be used) and flood risk issues could fall under into one Advisory Committee. It could be an evaluation group.

### *Miscellaneous Notes*

**Comment:** Recommendations do not have to have the same level of generality/specificity throughout.

**Comment:** Some of the recommendations will have specific language in the appendices, but it will need to be general in the front text.

**Comment:** The Committee should focus on the rationale and not the details since these will be important after Congress buys off on the rationale.

**Comment:** It would be useful to mention levees as an infrastructure issue in the background section. Because transportation infrastructure drives development, it affects the floodplain.

**Question:** Should the Committee talk to Peter Orsack from OMB as a feasibility check before the Strategic Plan is delivered?

**Response:** This should not be done before it goes to Congress, but the Committee could discuss strategies with OMB after it is delivered. This will be discussed during future roll-out discussions. In addition, Tracy Meehan could be a feasibility check at the Committee Meeting on December 9.

**Change:** The Committee decided to nest Incentives and Disincentives under Designated Programs.

### **Review of Broader National Flood Risk Management Recommendation**

***Recommendation 16:** The NCLS recommends that a separate congressionally authorized Committee be tasked to prepare recommendations and a strategic plan on the broader need for a National Flood Risk Management Program. The goals of the Committee would be to develop recommendations that integrate and synchronize the ongoing, diverse flood risk management projects, programs and authorities of the federal agencies, state organizations and regional and local agencies. This committee would take on the connecting issues related to the National Levee Safety Program but not currently wholly within the scope or goals of the Levee Safety Act. Examples of issues to be addressed within this National Committee on Flood Risk Management that would be complementary of a National Levee Safety Program include.*

#### *Context Discussion*

In order to provide context, the Committee discussed a graph that describes the three main components of risk: flood frequency, levee performance and consequence growth. The risks increase overtime. The levee loses integrity overtime, and people think it is safe since there is a levee, so the consequence grows. There is increased understanding of risks over time as well. It is important to look at all solutions, not just structural solutions and this is why you need a flood risk program in addition to a levee safety program.

**Note:** If this graph is shared with the Review Team or others it needs more detail (e.g, where numbers came from, etc). If it is used, a caveat will be added with a full description.

#### *Overview of Recommendation*

The idea is to highlight to Congress that the levee safety program does not solve all flood plain issues. It recommends a National flood Risk Management Committee. The purpose is to highlight the need for an umbrella program for levees and other programs (e.g. dams) to fall under.

**Question:** How would a National Flood Risk Management Program be different than NFIP?

**Response:** NFIP would be informed by a national flood risk management program.

#### *Reasoning for a National Flood Risk Management Program*

The Committee described a number of reasons why a National Flood Risk Management Program is needed, including.

- The levee safety program will inform the public on where risks exist, but it will not be the primary home for risk reduction because a lot of risk reduction involves development codes, evacuation, etc. A flood risk management program would cover these types of things. We have not covered a lot of the risk reduction issues in our levee safety program recommendations because it seemed beyond the scope of the legislation.
- There is no existing effort that can develop a robust enough flood risk management program with authority, funding, etc that could address the suite of flood risk issues.
- The existing authorities are not currently available. There is ambiguity from the courts and deficiencies at the federal level in the flood risk world.
- Some of levee safety issues (i.e., connecting to NFIP) make more sense under a broader flood risk management program than under a levee safety program.

- There are numerous documents that highlight a legislative gap and call for national floodplain legislation (e.g., Galloway). These reports also say a new EO is needed because EO 11988 does not go far enough.
- The USACE Flood Risk Management Program sees this as a gap.
- ASFPM's perspective is that the nation needs some type of flood risk management plan and that the Committee needs to say something about this.

#### *Concerns on Recommendation*

**Comment:** It is also beyond the Committee's scope.

**Comment:** Not everyone thinks legislation is needed.

**Comment:** This seems duplicative of, and could have significant consequences for, the Intergovernmental Flood Risk Management Committee's (IFRMC) ongoing activities. Bringing this recommendation to Congress before getting feedback from the IFRMC seems wrong.

**Comment:** IFRMC does not have the appropriate authority. It would be better if IFRMC had authority from a congressional mandate to grapple with issues. Everything is currently advisory and this is a problem. There have also been other efforts to coordinate federal approaches (EO 1198).

**Comment:** As part of this recommendation the Committee could endorse current IFRMC activities, suggest expansion of current activities, etc.

**Comment:** Some general frustrations the IFRMC has had include: difficulty linking with USACE National Flood Risk Management Program; more funding required for a combined flood risk management plan; need for stronger interagency coordination, need for improved public outreach

#### *Non-Structural Mitigation Issues*

**Comment:** Mitigation can include activities other than flood insurance, such as building codes. The Committee can include these topics for areas around levees. Once you get outside of levee areas, it is out of the Committee's purview.

**Comment:** At the first meeting the Committee talked about mitigation, and there was general consensus that mitigation was appropriate provided that it had to have a direct nexus to levees.

**Comment:** At this point, the group has not discussed some areas like emergency management plans, evacuation plans, etc., that arguably have a direct nexus to levees. The only place they are in the recommendations is in Work Group 1 recommendations, but this does not include enforcement activities.

**Comment:** It may be impossible to drive action on mitigation actions such as land use.

#### *Alternative Recommendation Suggestions*

**Comment:** If you really want to prevent flood plain risk, the federal government should stop providing significant investments to areas that have a lot of flood risk. Before giving a state funding to rehabilitate or build a levee, the federal government should require a land management and zoning plan. This recommendation will be further informed by tolerable risk numbers in the future. There are requirements that flood plain management needs to be part of the Emergency Action Plan. The local agencies have not done this, and the federal government has not required it.

**Comment:** There could be a long-term research effort to look at needs. It is necessary for a congressionally authorized project.

**Comment:** The Committee could recommend that the group created under EO 11899 be expanded to include non-federal members and that its current purview would be expanded. This would capitalize on current activities. The group could have 18 months or so to report on the additional support it needs.



### *Informal Voting*

All Committee members were asked if they believe it is necessary for the Strategic Plan to mention the necessity for some broader flood plain work. Some specific comments include:

- A statement should be made without a specific recommendation. It should highlight that a levee safety program is only as effective as a broader flood safety program. It is enough to mention this in the introduction and conclusion.
- It is an opportunity to articulate the issue and it should be included. It is an opportunity to be bold and edgy.
- A way to characterize this is that levees are a major part of the flood program. Congress did a good job setting up the levee program and the Committee believes they should do another good thing and expand a flood management plan.
- It should not be an official recommendation to ensure the recommendations are not perceived as being out of scope.
- Levees should be put in context, and I am not worried about being outside of scope.
- It is okay to be less specific than this recommendation, but there needs to be some statement.

### *Next Steps*

There seemed to be consensus that the Committee wants to say something, but is not sure what specifically to say or where to put it in the Strategic Plan. Volunteers will draft an update of the recommendation and bring back to the full Committee.

## **Review of National Levee Rehabilitation and Improvement Program Recommendation**

***Recommendation 15:** Create and fund a National Levee Rehabilitation and Improvement Program in order to repair our nation's unsafe levees.*

### *Background on Recommendation*

Background notes included:

- The purpose of this recommendation is that there will still be failures even if you have a program so you need funding for rehabilitation.
- A 65/35 federal/grantee cost share is suggested, which is standard.
- It would be enacted two years after the program starts so that the database can begin to be populated. This ensures a better sense of risk so that it is a risk-based approach.
- An applicant cannot receive federal funding unless they populate the database.
- One piece that was accidentally left out is a companion flood risk plan to ensure consequences are being taken into account.
- Tolerable risk guidelines could be used to prioritize funding in the future.
- The Board would make recommendations on whom should be funded.
- The funding estimates are astronomically higher than what has been used on dams. The estimates did take into consideration what Congress might consider.
- None of this funding would be used to develop new levees.

**Question:** How is this different than the current federal rehabilitation program?

**Response:** The criteria to obtain the funding include issues related to public health instead of just economic development and it would be “more expedited” than the current program.

**Question:** Can you use funding for levee system instead of just the levee?

**Response:** Yes. The text will be changed to indicate “levee system” instead of just “levee.”

**Question:** Does it include removal?

**Response:** It should. It is a change in behavior that we should be willing to support.

**Question:** Is this the first program of its kind?

**Response:** It is the only program where a federal program is based on tolerable risks. It is difficult to implement until we define tolerable risk levels (likely 4 years). It is also a difficult program to enforce.

#### *Funding Process and Decisions*

**Question:** How would funds get to states?

**Response:** One option would be through grant money, and there could be criteria.

**Comment:** This could be a way to encourage mitigation strategies by only giving funding if an evacuation plan was developed, for example.

**Question:** If a state is not eligible for funding, does it prevent local areas from obtaining funding?

**Response:** It does not need to, but having the funding connecting locals to states might encourage a bottom up approach. An idea could be to make the cost share for the grantee more if the state is not eligible for funding.

**Question:** Who would sign the agreement?

**Response:** It would be between the Board and the local community.

**Comment:** If the funding goes to the state, perhaps it should be an agreement between the local community and the state.

**Comment:** We would have to be careful on how money is spent because the funding could be spent quickly.

**Comment:** The federal versus non-federal levee is a problem. Early on, the federal levees that are turned over to locals could eat up all the funding. The only one excluded is the federally owned and operated levees. Something could be included to ensure funding gets to non-federal levees. This should not be outlined in the legislation, but instead the program should determine this during implementation.

**Comment:** Some of the decisions on how funding is spent would have to be decided by the Board to ensure there is some oversight, because the funding will not go too far.

#### *Proposed Grant Criteria*

**Comment:** An additional criterion could be no increased risk in the levee area, meaning that it would be unallowable to change the development around the area in a way that puts the levee in a different levee classification. The terminology could be kept general in order to let the community determine how to do this.

**Comment:** The problem is finding a way to enforce this.

**Comment:** We do not want the federal government involved in rehabilitating a levee that is going to cause more risk in the future. Therefore, a flood risk management program would need to be in place. It may be feasible if it is based on tolerable risks, building codes, evacuation plans, etc.

#### *Non-Structural Issues*

**Question:** Beyond structural solutions, what could the Committee do to help mitigate risks?

**Comment:** If we are not going to fund non-structural solutions with this recommendation, we should think about where to address this gap.

**Comment:** Perhaps there is a way to suggest changing FEMA and USACE program constraints to cover this.

**Comment:** One suggestion is to require that non-federal partners evaluate non-structural approaches as well (e.g., constructed wetland, buy-out). This may identify better uses of federal investments. It is complicated because it goes beyond the levee, but it is economically feasible.

**Question:** If an evaluation recommends a non-structural approach, could funding be used to help pay for it?

**Response:** We could consider a FEMA grant program to buy-up the land. However, the FEMA program is focused on areas within a flood plain. If they are not in a 1% area they will not be eligible.

**Comment:** FEMA and USACE could tap this fund for work they are doing with local sponsors. The 65/35 is set up that way so it is on par with other similar programs.

#### *Enforcement Issues*

**Comment:** Nowhere in the recommendations does the Committee address that there is an enforcement problem right now. There is continued federal investment in communities that are not doing the O&M they promised to do. The USACE is building levees with PL8499 funding in non-NFIP communities, often because there are some congressional interests behind it.

**Comment:** There are some existing authorities that have not been effectively exercised (e.g., PL8499).

**Comment:** The USACE has a huge regulation role in Clean Water Act 404 permitting, but is not funded well enough.

#### *Miscellaneous Notes*

**Question:** Is there a way to provide grants for inspections in the early years before there is a better sense of risks?

**Comment:** This might fit better under a different recommendation as we do not want to send in all federal employees to perform inspections because then we do not get the buy-in from the states.

**Comment:** That is not what was being suggested.

**Comment:** The most significant incentive the program could have is to eliminate future federal funding, but this may never be feasible.

**Question:** Why should the federal government participate and not just the beneficiaries participate? In today's environment, the federal government is going to pay the bill in one way or another, either in flood disaster assistance, PL8499, etc. The idea is to maintain what you have beforehand because it will provide more public safety and be a better investment.

**Note:** This should be highlighted in the rational.

**Comment:** It is okay to improve the levee to meet current needs, but we do not want to build higher levees just for future development.

### **Review of Certified Levee Professional Recommendation**

**Recommendation 7:** Recommend that the delegation of the National Levee Safety Program (or parts thereof) to States and/or local entities should occur only if that entity has at least one "Certified Levee Professional" on staff (or under contract) that is significantly responsible for the program..

**Question:** In response to the recommendation that “FEMA may consider modifying CFR 65.10 to require that levee certification be done by a Certified Levee Professional” (in leverage and impacts section), how hard would it be to change the CFR?

**Response:** It is about a 2-year process including public comment.

## **Review of Liability Protection Recommendation**

***Recommendation 6:** Recommend that Congress adopt legislation to provide liability protection to engineering firms and/or government agencies that perform engineering services for levee systems (e.g. inspections, evaluations, design, construction administration, certification, or flood fighting) for damages resulting from levee failures...*

**Change:** The terminology should be changed from “certification” to “compliance” (Implementation E and accreditation sections). This is due to legal issues. It will also help people divorce from FEMA guidelines, as people have come to think of certification as everything under 65.10.

*1.D. An alternative that should be considered for some projects is to have private engineering firms provide engineering services through the Corps so as to make use of the federal immunity from liability. It may be necessary to modify the Thomas Amendment in order to allow such expanded Corps involvement in some levees projects.*

**Comment:** The first sentence in 1D sounds like a pass through. It is recommended that this sentence be deleted because it is a non-starter for USACE.

**Change:** Add language that describes what the Thomas Amendment does so people who are not as familiar have a better understanding.

*2.I Engineering firms performing these services may still be found liable if found negligent. Potential liability might be an amount not to exceed the greater of the fee for services performed, or \$1 million.*

**Comment:** In cases where firms have been sued and lost in court, it has resulted in the loss of their liability insurance. It is an attempt to bring into balance the liability with the amount of work the firm is doing. A lawyer has looked at this. The cost could be increased to more than \$1 million.

**Comment:** It comes across as supporting negligence.

**Question:** What is the main liability issue?

**Response:** Third party claims as a result of disaster beyond the architect/engineers control. For example, an architect builds a levee for 100-year flood protection. If a 150-year flood occurs and it overtops, then the architect/engineer can be sued. If there is not some sort of relief you are not going to have high quality firms doing this work because they fear that they will spend all of their money defending suits.

**Comment:** In addition, it is not possible to engineer levees in the same way you engineer normal structures as it is impossible to find all possible defects because of the size.

***Recommendation 32:** Provide National Standards of Care to Help Manage Risk  
Congress should explore, through stakeholder input, development and adoption of uniform national standards of care for all levee projects and for levee maintenance activities.*

**Comment:** This is a recommendation that Congress develop some standard level of care, including maintenance. The way the current law works is that a professional assumes liability any time he or she

issues a professional opinion on which others rely and it results in harm. Legislation is not the right answer for ameliorating this issue. However, Congress can lay the ground for the discussion.

**Question:** Do you want liability relief on all levee services? Some people are taking comfort that if you have standards of care (i.e., similar to national codes) professionals will not have to worry.

**Response:** It is hard for engineers/architects to make the defense that they actually went through all standards of care.

**Comment:** I do not think the standard of care works because the local sponsor has to say that they indemnify USACE of any liability. No one has written an owner/operator piece yet.

#### *Rationale (Recommendation #6)*

*2C. In California, the 2003 Paterno Case found the State liable, by inverse condemnation, for damages incurred by flooded residents as a result of a levee failure along the Yuba River.*

*2F. In the past, the nation has found it necessary to provide limitations on liability to engineering firms in order to build certain types of structures or complete various projects. Examples of past liability protection include...*

**Comment:** 2C and 2F have nothing to do with compliance determination.

**Comment:** What I believe was driving the industry concern was the issue of certification. Even liability relief for certification is significant, but it is not possible to go beyond that.

**Comment:** Design and construction administration is beyond the scope of this program.

**Comment:** It was suggested that the Committee describe the issues and let Congress decide how to proceed because the Committee does not have the time or expertise on this issue.

**Comment:** This could be a lightning rod that could consume the whole document.

**Comment:** Another issue is ensuring that the state does not take on liability when it does inspections.

**Change:** The Committee decided that some recommendations are good and should be kept (1E, 1F, 2E, F, H). This recommendation will be re-worked by blending recommendation #6 with #32 and keeping components that the group agreed to.

#### **Review of FEMA-Related Incentive Recommendations**

**Comment:** Recommendations 23, 24 and 25 should be combined with recommendation 19 on incentives/disincentives.

*Recommendation 23: FEMA's Community Rating System (CRS) Program should be revised to credit a community based on its Local/State's levee safety program and augmented to increase/decrease maximum credits allowed for certain CRS activities, including but not limited to Activity 620.*

#### *Background on Recommendation:*

- If community has a qualified Levee Safety Program, it would receive credits based on its qualification level, which would lead to discounts on premiums.
- CRS would get away from the level of protection piece, which is how it is run now.

- Part B includes activities outside of 620 that could be used as an incentive. For these activities, the number of CRS points could change, thereby changing a community's credits. This would not be something that would only be done for levees.

**Question:** What was FEMA's thinking behind developing the 1991 rationale?

**Response:** It was when CRS was enacted.

**Comment:** The nuances of CRS are so extreme that you would need FEMA regulatory people to outline details. Therefore, the Committee should make a detailed recommendation.

**Comment:** Although it may be obvious that the CRS Task Force would take the lead on providing guidance on this, the Committee may want to specifically recommend the task force's involvement.

**Recommendation 24:** *Establish a new FEMA Mitigation (MT) Grant Program, which would be used to support the establishment of a sustainable National Levee Safety Program for all States, at least at a minimum level.*

**Background on Recommendation:**

- There would be cost share for future years.
- Highly qualified states would get a better cost share equation, in order to encourage them to be more qualified.
- In the long-term the program would be run by the Board, but it could temporarily be put under FEMA.

**Comment:** The Committee needs to go through the recommendations and determine which need to be legislated and which can just be attached to a current authority. For those that fall under an authority, the Committee may want to check in with the federal agency to ensure they would generally be on board.

**Comment:** FEMA said that it is okay with recommendations 23 and 24.

**Recommendation 25:** *Revise existing FEMA MT Grants Programs' to provide prioritization for grants to those qualified/highly qualified local, regional, and/or State NLSPs*

**Background on Recommendation:**

- This is based on existing programs that are already available.
- The intent is to create an incentive for states and communities to have a levee safety program by: 1) allowing for prioritization of non-levee related grants in levee areas; 2) allowing people to be eligible that normally would not be (e.g., benefit/cost ratio).
- The idea is to fund current programs better so that you are not taking money from existing programs.
- FEMA representatives think it could be feasible.
- The funding estimates do not have any substantial reasoning, other than trying to consider minimal requirements of the program.

**Question:** Do we want to suggest that Congress increase appropriations for PMP and HNBP for mitigation issues?

**Change:** The following sentence under funding should be revised: "Approximately \$40-50M should be provided collectively to initiate each NLSP State program and approximately \$5-10M a year for each additional year." This stresses administration and setup instead of activity.

**Change:** The funding estimates require a closer review. Rod will work with Craig on this.

**Question:** If this stays, does #27 (USACE to establish inventory and inspect all levees) go away?

**Response:** No. #27 says that USACE should do the first inventory. This recommendation is for maintenance or if a state wants to do its own inventory it can, in order to expedite the process.

## **Review of Mandatory Flood Insurance Recommendation**

*Recommendation 22:* *Require mandatory purchase of flood insurance for structures in areas protected by jurisdictional levees with risk based premiums (actuarial)*

**Comment:** “Jurisdictional” levee means any levee that was included in the National Levee Safety Program. We need to look at this term.

**Comment:** This is a possible disincentive because people may want not want to be part of the program if it means they have to buy insurance.

**Comment:** Currently, insurance is not required if you are not in the flood plain.

**Question:** How is the Committee linking something that is meant for all levees to those that are managed by FEMA as 1% protection through its certification program?

**Response:** FEMA is going to have to have a big paradigm shift on how it adjusts rates for just levees.

**Comment:** Add an implementation step that states that FEMA needs to accredit levees for exceeding the 1% level and develop appropriate rates.

**Comment:** There is a potential rationale from a programmatic expense perspective because there will likely be less post-disaster federal expense if everyone has insurance.

**Comment:** Proposed additional text includes highlighting that implementing this recommendation will incentivize communities to exceed the 1% certification. This could be a problem because a levee that exceeds certification can hold back more water, so if it breaks it could cause more damage.

**Comments:** If premiums are based on actuary risks it is more palatable.

**Comment:** It is very difficult for FEMA to implement risk-based rates.

**Comment:** The GAO report recommended risk-based premiums.

**Comments:** Is the insurance requirement based on the property itself or mortgages?

**Comment:** Having to buy insurance gives people angst. Even if the rate is low, people get upset because often their neighbor does not have to buy it.

**Note:** The group decided that contextually this recommendation is good if the details can be figured out.

## **Review of Environmental Coordination Recommendation**

*Recommendation 26:* *Federal assistance should be provided to facilitate federal environmental permitting from the Corps of Engineers and other federal agencies to ensure timely and needed operations and maintenance activities for federal flood damage reduction projects and other non-*

*federal projects. Streamlined operations and maintenance permits for jurisdictional levees should be encouraged.*

- 1. Recommend the inclusion of federal permitting in an operation and maintenance manual or a watershed or watercourse plan that allows the owner and operator of a federal levee to perform the required maintenance and/or construction without the need to obtain additional federal permits.*
- 2. Recommend the establishment of an environmental permitting standing committee on the National Levee Safety Commission/Board to facilitate permits needed for adequate operations and maintenance activities on federal levees.*
- 3. Recommend federal support and financial assistance with research and development of economically and environmentally-sensitive ways to perform operation, maintenance, repair, rehabilitation and replacement of flood risk management infrastructure that has outlived its useful life. (Also in R&D list)*

*Background on the Recommendation:*

- The purpose of this recommendation is to get existing projects through the permitting process more efficiently.
- #1 is not legislative. USACE is telling us is that for new projects permits should be coming with the O&M manual, but this is not happening. USACE is not helping with environmental permits for existing projects
- #2 calls for a Standing Committee. The purpose of the standing community is to have an interdisciplinary team in order to balance the need to protect the environment and protect the public through collaboration. A positive aspect of this standing committee is that it does not have to report to the board. The name of the committee should be changed.
- This is a facilitation liaison role for the existing permitting process.

**Comment:** The problem is that there currently are road blocks to what many people believe are appropriate O&M activities, and we can not afford to rehab all of those projects. We need an opportunity to bring both groups together to educate each other and compromise (but do not use the word compromise).

**Change:** The name of the standing committee should be changed. The words “streamlining and permitting” should not be included in the committee name.

**Comment:** The Committee may want to add a note that states would need to provide assistance as part of being a delegated program.

**Comment:** The Committee seems to be okay having a standing committee as long as it is not just made up of environmentalists. This group could be an incentive to states as they may be able to work on levees that they have had difficulty working on due to environmental issues.

## **Review of Assisting NFIP Communities in Raising Funds Recommendation**

**Recommendation 14:** *The NLSP should assist communities in the NFIP to raise local funds in support of levee safety programs by:*



- (1) *Aligning the NFIP, communities, and states to raise funds for state and community-level levee safety programs by placing a fee on flood insurance premiums in AL and XL zones, as requested by the community or state, much like the state of Texas has done for all flood insurance premiums sold through the NFIP.*
- (2) *Collecting a surcharge nationwide through the NFIP on flood insurance premiums in AL and XL zones, with the surcharge proceeds used to fund the nonfederal cost share on NFIP and FEMA levee safety grants for communities and/or states with levee safety programs.*
- (3) *Allowing communities, instead of policy holders, to receive the savings that result from a levee safety program under Section 620 of the CRS.*

#### *Background of Recommendation*

They are in order of complexity.

- The Texas approach highlighted in #1 is really a tax on all flood insurance policies. The insurance writers of NFIP policies just add a surcharge that goes to the state. In order to tie back to levees, this recommendation includes AL and XL zones. This is really a communication to highlight to other states the model Texas has used.
- The surcharge concept in #2 is an idea on how to fund the national program. In this case, the entities that would be collecting the surcharge are the insurance companies selling insurance. Some ideas on where the funding could go include: to FEMA for the grant program; back to the Board who can distribute it to most needy areas; back to the state (if it was a delegated program) or community where it was generated.

**Comment:** This could have inequality issues because only some people are being taxed, but the benefit is to many people.

**Question:** Should the Texas model be included as a recommendation even though states can develop an incentive like this even without a NLSP?

**Response:** There does not seem to be a detriment so there is no problem in having it as a recommendation. But it should not be at the same level as other significant recommendations.

**Comment:** It would take a lot of work to change CRS to make this change and 620 is worth only a certain amount of points.

**Comment:** Any savings to the policy holders could be provided to their community instead of the individual policy holder.

**Comment:** This is perverse because the whole purpose of CRS is to increase individuals buying flood insurance. One idea is to have a percentage of the savings go to the community and a percentage go to the policyholder.

#### *Next Step*

The Committee decided that it would highlight that it understands that funds will have to be raised from local communities and describe some helpful hints.

#### **Review of FEMA Accreditation Recommendation**

**Recommendation 28:** *FEMA should support the National Levee Safety Program by developing a robust accreditation process that ensures accredited levees meet required standards, and to change the term “certification” to “compliance determination.”*

**Comment:** This recommendation builds upon the idea of risk based premiums. “Risk based premiums” terminology should be used instead of 1% and 2%.

**Comment:** Committee members have heard anecdotally that reviewers are worried about liability.

**Comment:** A global concern is that the NLSP is going to have standards. The vision was to have one set of standards and that FEMA would point to them and not have ownership of standards.

**Comment:** FEMA right now accredits for flood insurance, and this seems to say that FEMA should accredit for more safety issues.

**Comment:** Components of this recommendation are in other recommendations.

**Comment:** It is possible to require the third party to furnish an outside review, thereby putting the burden on the local operator.

**Comment:** Caution – the words “robust” and “independent” are words that really stick out to Congress.

**Comment:** Do not have 6510 re-written as interim guidance. It just takes too long (at least 2 years) and it causes confusion.

*Next steps:*

This recommendation will be blended with #2 (safety standards).

## **THURSDAY, 4 DECEMBER 2008**

The group outlined roles for the Working Session:

- Run through crosswalk to identify any gaps (Bob and Paul)
- Governance (Karin, Phil):
  - Review what federal agencies need to be at the table (pros and cons of specificity) (do not need to obtain in too much detail on this one yet)
  - Think about Advisory Committees
  - How does a part-time board really work
  - Roles and Responsibilities of the Board
  - Bolster rationale
  - Funding estimates
- Liability issues: Blend 32 and 6 and look at FEMA Accreditation (Don, Sam, Steve, Les)
- Environmental streamlining. The purpose is to ensure the challenge in 26 is cleaned up and then work with the governance group to figure out how it works. (Susan, Mike).
- Rod help Craig with estimates for program setup
- Look to see if there are any “mitigation” type topics that you want to change the nature of. (Rod, Craig, Sam)
- Write statement about flood risk (Don, Susan, Sam, Bill, Terry)
- Levee Rehabilitation Act (Don, Les)

**Comment:** The Committee may want to consider the infrastructure stimulus package as a way to move the Rehabilitation Improvement Act forward quickly. A specific recommendation would be to encourage a governor to call the President to highlight the importance. One issue is that environmental permitting is an issue that could prevent a quick rollout.

**Comment:** It was suggested that the following statement be added in the background of the report: “It is essential that human health is the top priority of a levee safety program.” **Comment:** This is too broad. Instead, some language needs to be added on incompatible issues.

## **Review of Absence of Delegated Program Recommendation**

**Recommendation 18:** *In the absence of a qualified state program, the National Board should implement the following program measures:*

- *After initial federal inspection and assessment, conduct or cause to be conducted an inspection of high or intermediate hazard levees after significant flood events, and at least every five years, and update the NL Database.*
- *Provide inspection reports and findings to local emergency management officials.*
- *Conduct a program of public information concerning the presence of levees, their condition and their associated risks.*
- *Other and further action as the Board/Commission deems appropriate to encourage, publicize the benefits of and foster support for a qualified state program.*

**Background of Recommendation:**

- If a state can not be delegated this is the default position.
- State qualified programs should be the primary mechanism of implementation, but a state may not apply, may not achieve qualified status, may lose qualified status, etc. Certain minimum elements should be implemented to ensure three things: there is a basic level of protection, outreach on risks is provided, and state programs are encouraged.

### **Contextual Comments**

**Comment:** If you do not have a “what-if” delegated program, you basically have a voluntary program. There should be something in this recommendation that makes it uncomfortable for states. Another question is about a cost recovery mechanism.

**Comment:** There was a discussion about whether the steps make the public safer or not. In some ways, the outreach might make individuals change their behavior and encourage the local and state government to take steps.

**Comment:** The role of the federal government would be to come in and highlight any imminent threats. The state government would be identified.

**Comment:** Some states without a lot of levees may prefer the national program to come in and do this work. The overall impact of the state needs to be negative.

**Comment:** If the federal government is already providing levee services (e.g., USACE inspection of completed works), it might be a bit more enticing for states to not qualify and have the federal government continue to provide these minimal services.

### **Combining with other Recommendations and Detail Level**

**Comment:** It may be more effective to add this information under the recommendation about establishing state delegated programs. It would basically say that it will take 5 years for states to get up-to-speed. Then, say after 5 years, there will be some kind of threat. It may not be necessary to define the threat in our recommendation.

**Comment:** This recommendation may be part of the “hammer” recommendation in the disincentives section or in the general program implementation section.

**Comments:** The Committee members working on governance issues could iron out how things hang together and how the incentives/disincentives work together.

**Comment:** We do not want to have such a huge hammer in these initial recommendations if we want Congress to be interested. It should be highlighted as something to look at in the future, but not come up with details in the recommendations.

#### *Implementation/Timing Issues*

**Comment:** We do not want to make it easy for people to obtain default support so the period of time before the “hammer falls” should be more like five years.

**Comment:** In some respects, the mission should be that this is a hard task, but this has to be done. At a minimum, it is necessary to give states four or five years to obtain the tools and techniques and get up and running. If this is implemented, it should not be included in the first phase.

**Question:** Related to “Provide inspection reports and findings to local emergency management officials,” this could be sent to additional parties, right?

**Response:** Yes, but the idea is to provide the basic level of protection so that is why they are listed specifically.

#### *Incentive/Disincentives*

**Comment:** A suggestion is to add annual notifications to the state legislature and Governor reminding them of the states’ lack of participation and the benefits of the program.

**Comment:** An incentive might be that states now want the federal government to be inventorying their levees and putting information in the media.

**Comment:** The country is not going to let a natural disaster become a public disaster. It is impossible to say that emergency assistance will not be provided.

**Comment:** In order to have certain benefits withheld, legislation will be required. If changes are made, it will have to be re-legislated.

**Comment:** The Strategic Plan has 3 sections: activities that can happen right away; initial actions; and long-term actions. A natural part of these safety bills is reauthorization.

#### *Access to Private Land Issues*

**Question:** Is the access to private property insurmountable?

**Response:** Congress can authorize this. There is precedent, but there would have to be a significant levee risk. As soon as you step on to someone’s private property you get involved with private law. This happens with underground storage tanks, but they have to show some kind of risk to wells, etc.

**Comment:** The federal government could say that if you do not allow it access to private land, then you are assumed out of compliance and the government will fine you, you assume all risks, and they will spread the word. It is legally doable, but very unlikely.

**Comment:** Most state statutes have right of entry so this may not be that big of an issue.

**Comment:** The federal government could tell states that if you will not even let the federal agency come in to inspect their sites, then the states take on the liability.

**Question:** What authority does the federal government have to inspect non-federal levees?

**Response:** One idea is to make state participation in the inventory piece a mandatory activity, instead of voluntary. They will not have to pay for this though.

**Comment:** It is not possible for the federal government to make it mandatory for states, and you can really only do states incentives/disincentives. Most states will not object if the federal government is going to fund it.

**Question:** When there is a disaster, can the federal government come into the impacted area?

**Response:** No, the state has to sign the authority over to the federal government.

**Question:** If it is a levee impact area, is it within FEMA's authority to enable assessment of the levee as part of the sign off?

**Response:** This would have to be a legislative change.

#### *High-Level NLSP Issues*

**Question:** Could a community be in the NLSP program if its state was not?

**Response:** Assistance can still be provided, but it will not be "officially" brought to the table.

**Comment:** In general, we need to understand the costs. Committee members should utilize the cost spreadsheet.

**Comment:** Aspects that have not been considered, but should be at some point include: seller disclosure should be included and the levee owner operator being notified when there is development.

### **Review of Statement on the Need for a National Flood Risk Management Program**

After some discussion, there was general consensus that this topic will be addressed through some contextual introduction and conclusion text, but not as a specific recommendation. By putting this right at the beginning, it shows that it is of high importance.

**Question:** Do you think the "damages continue to rise" is accurate even without levees?

**Response:** Yes.

**Question:** Should we describe why "loss of life and property to due floods continues to rise?"

**Response:** Some people thought this should be described to provide more reasoning and the sense of urgency. Others thought this was not necessary.

**Comment:** It does not have the bold and edgy statement that NLSP is not enough. The Committee does not cover the footprint of non-levee areas and does not have the right expertise in the room to deal with broader issues.

**Comment:** It is missing an understanding of why we are making the recommendation. It basically says we recommend this is needed, but does not get into how a lack of a flood risk management program is translating on the ground. This could likely be covered with one or two sentences that cover why there are other factors than levees that make a difference.

**Comment:** It is a contextual piece. While we all understand that levees are just a component of flood risk management, the reader may not.

**Comment:** The last paragraph in General Riley's report highlights IFRMC. There seems to be groups that have been working on this for a long time and this is an opportunity to give these groups the tools they need to move forward. It is not a good idea to suggest another group when there are already groups working on this.

**Comment:** If nothing else, without bringing up IFRMC it could be interpreted that the Committee does not know about IFRMC.

## **Review of Levee Alternatives Recommendation**

*The NLSP should encourage alternatives to levees where feasible to manage risk in areas that are, or could be, protected by levees. The encouragement should take the form of requirements, incentives, and disincentives that would give preference to alternatives other than levee repair, rehabilitation, improvement. Construction of new levee systems should not be funded by the NLSP.*

### *Purpose of Recommendation*

**Comment:** We had a couple recommendations on this broader issue of flood risk management. There was a feeling that we had not explored all non-structural levee mitigation options. This is meant to deal with that, but it is really just a list of strategies.

**Comment:** The purpose of the assignment was to highlight key mitigation recommendations that we missed (e.g. evacuation plans), not to highlight a full suite of all potential strategies. It was meant to just highlight any specific mitigation areas on which the group wants to give recommendations.

**Comment:** The activities on the long list are things that communities can do that are beyond the minimum. Communities should be rewarded in some way for doing these good things, in a way like CRS.

**Comment:** This recommendation just asks the community to consider options other than structural activities.

### *Levee Construction/Repair*

**Comment:** The Committee previously discussed that there would not be a lot of money for levee repair and improvements. Language on this is provided in the National Rehabilitation Act recommendation.

**Comment:** "Construction of new levee systems should not be funded by NLSP." This would just mean that any new federal levees would not be funded without USACE.

**Comment:** This gets into the question of repair/rehabilitation, which sometimes includes new levees.

**Comment:** It should not be NLSP's position to tell people how they should or should not buy down risk.

### *Non-Structural Consideration Criteria to Add to Rehabilitation Act*

**Comment:** Considering options other than structural activities is already one of the criteria to receive Rehabilitation Funds. To obtain funds, a community has to consider non-structural mitigation strategies. The process steps (or an iteration of them) on page 2 and below should have to be part of the Rehabilitation Grant recommendation proposal. These are things that will improve your priority and cost share.

- *demonstrated consideration of a broad range of non-structural options, and where necessary, a nonstructural/structural blend of flood risk management approaches, of which the levee shall be a part, prior to approval of a new levee*
- *public outreach/notification*
- *buyer notification of flood risk*
- *levee owner/operator notification of any proposed development behind the levee*
- *encouragement of flood insurance purchase*
- *evacuation plan*
- *emergency response plan*
- *emergency stockpiles*

**Change:** At this point, the Committee should not provide detail on non-structural criteria. The Committee decided to include the small list above in the Rehabilitation Act recommendation, but will highlight them as examples using “such as” terminology.

**Question:** Does the Rehabilitation Act include O&M?

**Response:** There is something in there.

*Notification of any Proposed Development behind the Levee*

**Comment:** Requiring levee owner/operator notification of proposed development behind levees could have a positive affect when it is part of the permitting process for new development. However, it is unclear how to force this onto the local entity.

**Comment:** The state can entice it to do it in the same way the same we provide incentives/disincentives.

**Comment:** If the local entity already has it in its mind to move forward with development, this notification does not make a difference.

**Comment:** Even though this does not give the owner/operator the power to stop development, it at least gives them knowledge.

**Question:** It is simple how this is written, but how would it be implemented? This was an objective in CA, but it did not turn out this way. In CA, there are incentives for some of these things.

**Comment:** Incremental decisions are part of the problem that went down in Katrina.

**Comment:** To make this work, the developer needs to have an understanding of how the development affects the risk. Most levee owners will not be able to make this determination. The change has to take place at the local level that requires the developer to take risk into account as far as permitting.

**Comment:** It does not appear to be that difficult through the local planning process. The city would send the plan to the owner/operator and consider its feedback in their review. It is something that is appropriate at the local level.

**Comment:** Language on notifying the owner/operator about development could be added as Recommendation 17, under to be a qualified entity. It could be added to #1 – *Have rules, regulations.*

**Response:** The group decided not to add this here.

**Question:** Would this be a requirement to be a qualified program?

**Response:** It was argued that this is already a requirement to be a qualified entity under the state delegation recommendation (#17, 9). It says “provide public notification of the maintenance ratings and risk behind levees at least annually.”

**Comment:** In previous meetings we discussed that we wanted our minimal elements to be achievable because otherwise it will be too difficult for states to be part of the program. In addition to state qualification, there may be other minimal requirements that are necessary for the Rehabilitation Grant. In addition, there are some things that could be incentives for grant priority, cost breaks, etc.

#### *Evacuation Planning*

**Comment:** A minimum requirement to be a qualified entity should be that the states would have to have some evacuation planning.

**Comment:** The federal level could develop evacuation plans as guidance, states oversee them, and local governments develop them.

**Comment:** This is already in Recommendation #17, to be a qualified entity:

*“5. Require or perform development and implementation of emergency action planning procedures for imminent or actual levee failure.”*

**Comment:** This says they have the authority, but they do not have to actually do the work. This could be tied to Hazardous Mitigation Program grants.

**Comment:** It was proposed that this be added to a qualified entity through the Hazardous Mitigation Program.

**Comment:** It was argued that it is already a requirement for a highly qualified entity (#17, 2): *“To require compliance with the National Levee Code.”*

**Question:** Is it okay for it only to be a requirement for highly qualified?

**Comment:** Originally, the Committee decided that it did not want to add too much to the qualified entity. Do we want to add more at this point?

**Comment:** One idea is to make it a requirement for states to oversee evacuation plans, but incentivize local communities to develop them.

**Change:** The group decided to add some text indicated that a state must require and provide oversight on emergency management planning to #17, qualified entity #1: *Have rules, regulations, guidelines, policies, and procedures in place as needed to implement the program.*

#### *Qualified vs Highly Qualified*

**Comment:** A recommendation is to define clearly what the minimum is for a state program is and then put the rest of the things that are nice to have in the incentivized programs.

**Comment:** There was a lot of confusion on the difference between qualified and highly qualified.

**Comment:** No state is going to make highly qualified because there are so many communities with varied levels of levee activities in the state.

**Comment:** The mechanisms to reward are at the local level, but the list of activities under highly qualified pertains to state activities.

**Comment:** The purpose is to say that organizations that do these things will get more incentives.

**Comment:** The question was raised as to whether there was any significant difference between the qualified and highly qualified criteria. If a state fulfilled items from some qualified criteria and some highly qualified criteria, but not all of either set, it should be getting recognition.

#### *Reorganization of Information*

**Comment:** It seems that there are a suite of things that need to be added to the Rehabilitation Act in order for people to obtain federal funding.

**Comment:** This is a way for us to show that we believe there are other things that are important other than levees. This text could be partially in the Rehabilitation Act or Disincentives/Incentives section.

**Comment:** It was suggested that the long list on page 1 could be incorporated into the report in some way in the incentives and disincentives section.

**Comment:** It was suggested that #17 be divided into two recommendations:



- 1) Minimal requirements (1<sup>st</sup> 9 +4)
- 2) Move the last qualified entity into the incentives/disincentives section

### **Review of Crosswalk Findings**

A few potential gaps were shared:

- “Compliance determination” should be included in the list of definitions.
- In some of the levee safety standards we may want to include an external peer review for new high hazard area projects.
- We need to consider how the recommendation for mandatory flood insurance relates to canal structures. It might be necessary to add some language.
- All goals seem to have good recommendations
- A few questions might not have been addressed, but it seemed appropriate. They were questions such as “which things should not be included..

### **Review of Updated Liability Recommendation**

This is an expansion of recommendation #6 on liability protection.

#### *Municipal Engineers*

**Question:** At one point the recommendation covered local government engineers that certified levees. Are they still covered?

**Response:** Under C.2, you could expand to include individual municipal engineers. There is some nuance because the county could have an engineer, but someone at the county could have told him to do go down a certain path.

**Change:** Change language to “engineering firms, local agencies and individual engineers” under C.

**Question:** Do you need to include the individual municipal engineer as part of 1<sup>st</sup> party liability?

**Response:** This does not seem necessary.

#### *Level of Liability Relief*

**Comment:** From an engineering perspective, I understand this is a significant issue and there are the consequences if Congress does not look into it. However, this does not pass my test for feasibility. It is very complicated and deserves a lot more effort than what we can put forward.

**Comment:** The section that gives me the most heartburn is C3. The concept of a fixed fee amount is appalling.

**Comment:** This has broad consequences such as affecting issues like malpractice reform, etc. It also could be the issue that prevents the strategic plan from going forward because people will focus on this instead of the rest of the recommendations.

**Question:** What is the most significant issue for the private sector?

**Response:** Design. This is happening all the time. Certification is what started the conversation, but it quickly turned to design. The impacts of having “undesirable” engineers design levees is just as big of problem as “undesirable” engineers certifying levees.

#### *Level of Detail of Recommendation*

**Comment:** The Committee should not be providing such specific liability recommendations.

**Comment:** It might even be possible to refer to associations like ACEC for suggested solutions, but it should not come from NCLS.

**Comment:** It was suggested to change the language from “adopt” to “explore.”

**Comment:** The text could be changed in first paragraph from “should be implemented” to something like “to be considered.”

#### *Informal Voting/ Next Steps*

- The Committee agrees on the following: 1) liability is a problem; 2) it has serious impacts and something needs to be done about it; 3) it is imperative that a solution to this problem be found in order to have an effective program; and 4) Congress should find a solution to this.
- The Committee wants to put examples of how Congress could deal with this issue (some form of the current recommendations) and some kind of process recommendation.
- The text should highlight that this is in an interdisciplinary issue so there needs to be a group of experts to handle this.
- The Committee wants to highlight that Congress should do something about this now, beyond just setting up a group to discuss the problem.
- SRA will take a stab at modifying the recommendation and bring it back to the Committee.

### **Review of Updated Governance Recommendation**

#### *Background on Recommendation Update*

- A background document that describes the spectrum of different governing models was provided along with an updated governance chart.
- The model that most closely describes the recommended governance structure is the Policy Board model. The Board has decision making authority and does more than just providing advice to the Board staff.
- One concern is that if the Board Staff gets too large and too strong than they overwhelm the Board.

**Question:** The background handout on types of governing bodies seems to be more for the private-sector. Are these models relevant?

**Response:** Some are for non-profit organizations. We chose one that is what we believe the NLSB should be.

**Comment:** The worry about not enabling the staff to be too powerful is important. Should the NLSB have some of the ability of the Management Plan, namely that in the future it could do strategic planning instead of just making decisions?

**Response:** The NLSB has elements of the management team model. It is different in that it does not have full-time day-to-day operation positions.

**Question:** What was the thinking behind choosing this type of governance entity?

**Response:** The group went through an exercise included with the handout to determine “which board type is best for you.” The exercise went through the purpose of the governing body, how much of a role it should have, etc. The main objectives we would hope the Board to accomplish are: to maintain independence; ability to develop recommendations; ability to do evaluation on the program as a whole; track progress on what is changing because of the Board; and how the program is having an impact on levee safety.

**Comment:** Remember that this model is the end state.

**Comment:** The Executive Director would be hired by the Board.

#### *Advisory/Standing Committees Staffing and Roles*

**Question:** Do the Advisory Committees have anything to do with Board staff?

**Response:** The Advisory Committees would report directly to the Board. Their efforts would be largely staffed by the Board staff. In addition, professional assignments could also do a lot of the work on the Advisory Committees.

**Comment:** The Advisory Committees do not really seem to be advisory, but instead seem to where the programs are actually being developed.

**Change:** The terminology could be changed from “Advisory Committees” to “Standing Committees.”

**Comment:** The Board staff should be administering the programs. It is impossible for staffing functions to be run by volunteers.

**Response:** The way it is set up now, Standing Committees are a hybrid of staff, professional staff on detail to the program and volunteer advisors. There are successful examples of Standing Committees set up in this way. They are chaired by a volunteer, run by the staff, and advised by volunteers.

**Comment:** Each Standing Committee would have a Program Manager who is a full-time board staff position in each of the Standing Committees and an advisory group.

**Comment:** An example is FEMA’s National Dam Safety Review Board R&D Standing Committee, in which there is a grants administrator who is a full-time staff and an Advisory Committee that advises the Board. The board gives direction to the staff

#### *Board Roles and Responsibilities*

**Comment:** Making decisions and approvals might need to be added to the roles and responsibilities of the Board. For example, we would assume that the Board is making decisions on delegation, approving the budget, etc.

**Comment:** There was a recognition that in the initial stage the time spent dedicated to Board activities could be significant. It could be approximately 25% of time.

**Comment:** The current description of the Board seems appropriate.

#### *Next Steps/ Changes*

**Comment:** There will likely be a simplified version of this document as a graphic in the Strategic Plan.

**Comment:** The graph needs to be clarified. The day-to-day functions and implementation are run by the staff. The Standing Committee Advisory Committees are a place where volunteers can provide recommendations. The idea is that there is a direct back-and-forth between the Standing Committee Advisory Committee and each Standing Committee’s Program Manager.

**Comment:** The Committee agrees the graph is not explaining the approach significantly.

**Comment:** It was noted that the group really needs the narrative text to react to.

**Comment:** The narrative should be about 2 pages, Guiding Principles should be included, and titles and responsibilities should be refined.

**Response:** This is already developed as a draft narrative, but does need the Guiding Principles added.

**Comment:** The name of the “Levee Management Code” should be changed.

**Response:** A suggestion is to use “Technical Committee” terminology.

**Question:** Can we go back to “Delegated Program” terminology?

**Response:** A decision was not made.

## **Review of the Updated Environmental Coordination Recommendation**

*Recommendation #18: Develop and implement measures and practices to more closely harmonize levee safety activities with environmental protection requirements and principles.*

*1. NLSP Board should direct Research and Development efforts to evaluate O&M practices for existing projects and to develop cost-effective measures to make O&M practices more compatible with present-day natural resource management principles. Development should be by an interdisciplinary team, comprising technical and environmental expertise, addressing the need to protect public safety and the need to protect natural resources.*

*2. NLSP Board should establish a standing committee to address O&M for existing projects and to address how to better coordinate environment and safety issues on rehab and new construction.*

*3. NLSP Board should require states to establish an approach to facilitate operations and maintenance permits among each of the state resource agencies as part of a qualified program.*

### *State Coordination*

**Question:** What does #3 really mean and what are you trying to accomplish?

**Response:** In order to do work, levee owners/operators may need to obtain permits. This is an effort to ensure coordination takes place among state agencies.

**Comment:** The wording needs to be changed.

**Question:** Should it be a requirement or something you encourage?

**Response:** A requirement

**Question:** How does it happen now?

**Response:** A lot of time the coordination does not occur and so projects are held up.

**Comment:** The current qualified minimum requirements dance should more obviously highlight coordination needs.

**Comment:** R&D recommendations will hopefully provide guidance (or “magic”) to the states through some incentives on how to do O&M in an environmentally conscious way.

**Comment:** The R&D output of #1 is going to be small compared to the real need of state coordination in #3.

### *Standing Committee*

**Question:** What are the objectives of the Environment and Safety Standing Committee?

**Response:** The objectives are included on the newest governance chart. At some point the Committee may need to determine what else this group should do. It could be something that speaks to the idea of a true dialogue on environmental issues.

### *Rationale*

**Comment:** We have to be careful when we talk about “streamlined” permitting. The process must be expedited, but not to the detriment of the environment. Ensure that rationale makes a case that this is important.

**Comment:** The group discussed that the rationale for the Standing Committee is that there are environmental laws causing difficulty such as CWA and ESA.

**Comment:** This Standing Committee is meant to give a seat at the table to environmentalists to open the dialogue and encourage more efficient permitting.

### *Miscellaneous Notes*

**Comment:** This language is very inclusive.

**Comment:** Others thought the language should be reviewed because it is not sensitive enough on environmental issues.

**Comment:** Did the working group review Review Team comments?

**Response:** Yes. The established Standing Committee seems to address its questions. The National Wildlife Federation representative liked this idea.

### *Next Steps/Changes*

**Comment:** The group discussed that “the protection of human life” is the top priority in a national levee safety program and should be put in the context of the whole strategic plan and not specifically in this recommendation.

## **Review of Updated Rehabilitation Program Recommendation**

### *Expansion of the Program to include Non-Structural Activities*

**Comment:** We are trying to say that the applicant should consider alternatives, but that the rehabilitation grant funding can not be used for non-structural activities. There is not enough funding to do rehabilitation and non-structural activities.

**Question:** Do we need a larger grant program?

**Comment:** It sounds like there should be a separate grant program on non-structural activities. It may mean defining a larger pot of money, rather than just pointing to existing sources. If we do not have enough incentives for the state to take this on, how are we going to encourage the locals to be interested in it?

**Comment:** One idea is to have a percentage of the funding be designated for non-structural activities.

**Comment:** We do not want to lose money for rehabilitation because it is so important, but we need money for non-structural activities too.

**Comment:** The group decided that a larger fund for rehabilitation and non-structural activities would fill the gap of supporting mitigation activities. The key element would be risk reduction. It would include levee rehabilitation and improvements and all other non-structural activities.

**Comment:** If it is the same fund, then you do not have to deal with the issue of the sponsor choosing the cheaper option. An idea for this would be that the local can use in-kind services up to 10% of its 35% cost share.

### *Details/ Suggested Text Changes*

**Comment:** This is for existing projects, not new ones.

**Comment:** There would be an exclusion for those who are going to obtain the 1% FEMA certification. They should be directed to the FEMA program.

**Comment:** The group decided to leave in the text that requires “*The need to address existing levee systems in urban areas with high damage potential.*”

**Change:** Do not use the terminology non-structural “alternatives.” Instead, use non-structural “activities.”

**Comment:** There was some controversy on criteria j, on the need for a master plan. One person was noting that you can not suggest sustainable development for communities across the country. It is a hot button issue for mayors and elected officials. Others like the idea that it is stronger than just notifying the owner.

#### *Next Steps*

- The group discussed that the funding may not be sufficient.
- Don will repackage the recommendation so that it funds non-structural measures (for levees) to reduce risk.
- Susan/Karin will provide some suggested text to Don on the Master Plan Criteria language.

## **FRIDAY, 5 DECEMBER 2008**

### **Outline of the Strategic Plan Recommendation Section**

A draft Strategic Plan Recommendation Section outline was shared with the Committee, which was very happy with the overall structure.

#### *Explanatory Notes*

- This format follows the mission, to provide goals and strategic plan.
- From an overall standpoint, the actual recommendations and rational go in sections II and III.
- Section IV is really the roll-out of the program.
- Funding will likely go under Section IV.
- Thought was not given to ordering under each sub-category.
- There will be a conclusion that highlights urgency, etc.

#### *High-level Comments/Revisions*

- The R&D recommendation needs to be added.
- The Certified Environmental Professional recommendation falls under the state level, and should also be covered under the federal government too.
- Ensure roles of states are covered.
- Ensure definitions and hazardous classifications are added.
- Add a note under II for communicating the problem. The idea is to highlight the need to understand risk.

**Comment:** For implementation, the levee safety framework is going to be an incentivized program. The disincentives are going to come out later.

**Comment:** Some long-term recommendations still have immediate actions that will need to be included, so please be sure to pull those out.

**Comment:** Immediate is defined as activities that can be started right away without requiring legislation. The intent was to list things that Congress can move forward with right away.

**Comment:** Just a reminder that we need to flesh out immediate and long-term steps better.

**Question:** Where should the liability issue go? It is now under IIIa and IIIg.

**Comment:** It was noted that there is no problem discussing liability in several areas and that it is appropriate under IIIa.

**Question:** There have been no specific alignments to the USACE as specific recommendations. Should there be?

**Comment:** The one thing that could be highlighted is 8489.

**Comment:** Section 404 Wetlands might have a role.

**Note:** USACE will think about this.

#### *Terminology Issues*

**Comment:** The primary role of the NLSB is to administer a delegated state program.

**Comment:** Do not use the word “mandated.”

**Comment:** One of the biggest elements is mandating states. The word “delegation” does not come across as strong enough. Revised Recommendation 17 provides suggested language.

**Comment:** The concern with the word “delegated” is that if the state does not do the work, the federal government will do it. It does lack some clarity, but the states understand the word “delegated.”

**Comment:** The main point is that this is a state run program, and the full program will not be provided by the federal government. Instead, a bare minimum will be provided (e.g., inventory). Disincentives need to continue to be highlighted.

**Comment:** There was not consensus on use of the word “delegated” and how to proceed. Additional discussion may be required.

#### *Funding Issues*

**Comment:** The Committee needs to have a sense of magnitude before going to the Review Team.

**Comment:** Information could be provided on key costs topics including:

- Cost to extend inventory to non-federal levees (Eric)
- Cost of state levee programs (Craig and Rod)
- Annual Board costs (Karin)
- Rehab costs (Don)

### **Discussion on the Dec 12<sup>th</sup> Review Team Meeting**

#### *Review Team Product*

- The Review Team product will be draft sections I-III of the Recommendations Section, with a very high level section IV (just a sense of what is an immediate action).
- SRA will develop a draft and send to the Committee late on Monday, December 8<sup>th</sup>. The Committee will highlight any fatal flaws on Tuesday, December 9<sup>th</sup>. After these revisions are incorporated, it will be sent to the Review Team.
- There was general consensus not to put costs in the actual document to send to the Review Team.

## *Proposed Review Team Agenda*

### Objective

- To obtain its feedback on recommendations. It will likely only have one week to provide feedback, though the actual feedback deadline has not been determined.

### Overview

- Brief reminder of mission/vision.
- Brief overview from Review Team Meeting #1. This will include a general overview of the comments received and how the Committee used the comments. Terry is working on a summary.
- Overview of the process for developing recommendations. This will be an explanation of how the Committee developed the product sent to the Review Team. An example recommendation may be shown to describe how the Committee considered rationale, timing, cost, etc. The crosswalk process will be explained to demonstrate that the Committee ensured there were no gaps for any of the goals, and that all key questions from the last Review Team meeting were answered.
- Something about funding will probably be added to give the Review Team a sense of magnitude. The Committee will decide on what to add on December 9<sup>th</sup>.
- There will be a few slides on the roll out. They will not have a chance to review before the 15<sup>th</sup> when it goes to Congress, but can review afterwards during the roll out.
- Overview of the Recommendations Section Outline. This will explain how everything fits together.
- Overview of meeting purpose and objectives.

### Presentation of actual recommendations

- The presentations provide a high-level overview of the recommendations based on the strategic outline format. Presenters will take on different sections. The Committee will determine who will present on December 9<sup>th</sup>.

## **Discussion on Dec 16<sup>th</sup> Public Meeting**

- This will be a two-hour Web Ex.
- Committee members are welcome to join in-person at SRA.
- The presentation will be a very brief version of the content shared at the Review Team.
- Question/Answer format will be determined by the attendance size. If it is a large group, attendees will likely have to send questions electronically, but if it is a small group they will likely be able to ask questions over the conference line.

## **Agenda for Dec 8-11 Committee Meeting**

- Larry Larsen will come in on Wednesday afternoon, right before dinner. He is there to help with strategies for the rollout plan, how to interact with Congress, etc., but will not stay too long.

## **Review of Updated State Delegation Recommendation**

A memo was handed out (also on Backpack on the Resources page) that is meant to be an educational document on non-structural activities. It shows that OMB has some feedback.



***Recommendation 17:** In order to participate in the National Levee Safety Program, States will develop and implement State Levee Safety Programs within 5 years following enactment of the National Levee Safety Program. Failure to implement a State Levee Safety Program would result in the state being ineligible for certain federal funds for economic development and capital improvements. The minimum elements/requirements of a State Levee Safety Program would be as follows:...*

**Comment:** The working group was asked to delete the qualified and high qualified language and move the highly qualified requirements to the incentives section. Before the requirements covered: monitoring, inspection, public information and coordinating the roles between federal and state. I am not comfortable with the fact that additional requirements have been added. In addition, the clarity of requirements and prescriptive idea has been lost.

**Change:** The terms “qualified” and “delegated” need to be added back to the recommendation. However, it should not include the different qualification levels that were used previously, because this was confusing.

*17-5. The state would require local governments and agencies to provide available information needed for the National Levee Database (NLD), and to provide updates annually, and reflect levee risks in local and state hazard mitigation plans.*

**Comment:** This is not extra work for the states, and is a little bit more work for the local governments. It is an opportunity to harmonize with FEMA activities. It would help enhance hazard mitigation plans.

**Change:** Add language to highlight that this goes into affect after the initial inspection by USACE.

*17-3. The state would adopt measures as needed to require consideration of nonstructural measures associated with any levee related activities.*

**Question:** Would the state need to have authority and a plan?

**Comment:** We may want to require a levee safety plan. States have plans for environmental planning, funding etc. that they pull off the shelf when they need guidance (e.g., the hazard mitigation plan). It is a written document that captures intent and policy, provides guidance on where the state is trying to go, and provides consistency across organizations. Having a plan allows a state to have flexibility in how it implements the requirements of the Levee Safety Program.

**Comment:** The group decided to reorganize and categorize the recommendation in a way that integrates authorities.

**Comment:** States should have the authority to do everything except maybe enter private property.

**Comment:** This section needs to be prescriptive about what authorities states need to have.

*17-10. The state would agree to serve as the coordinator between the National Levee Safety Program and levee safety programs within the state.*

**Question:** Does this preclude the Board from working directly with communities?

**Response:** The only new funds are the funds to set up the Board. Everything else is just aligning with current grant programs. If the locals do not have to go through the state for existing programs now, they would not have to in the future either.

*17-13. The state would coordinate application packages from entities within the state for grants from the NLSP and coordinate/disburse grant funding from the NLSP.*

**Comment:** # 13 is consistent with the way the Rehabilitation Fund is set up, basically as a pass-through to the states.

**Comment:** The question is does the Rehabilitation funding have to be a pass-through to states or can communities apply directly with the Board for funding? The Committee may not want to provide an either/or recommendation but just describe the concern to Congress.

*17-12. The state would require and provide assistance to local communities in developing flood risk management plans that would be incorporated into the public safety element in updates to local community plans for development in local communities.*

**Comment:** #12 may be too stringent for a minimal requirement. Until tolerable risk guidelines are out there, it may be impossible.

**Comment:** For FEMA programs there are already plans like this out there.

**Note:** There was no consensus on how to proceed on this issue.

*17-4. The state requests a one-time inspection by the Corps of all jurisdictional levees within the state.*

**Question:** What if states have all requirements, but are waiting for their inspection from USACE?

*Next Steps:*

The recommendation will be modified and sent out to the Committee for review.